

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

INEOS JOLIET US HOLDCO, LLC,

Plaintiff,

V.

FHRGC&A, LLC
and **FHR HOLDING, LLC,**

Defendants.

Civil Action No. _____

MOTION FOR LEAVE TO FILE COMPLAINT UNDER SEAL

Plaintiff INEOS Joliet US Holdco, LLC (“INEOS”), by and through its attorneys, hereby seeks to file its Complaint against Defendants FHRGC&A, LLC and FHR Holding, LLC (collectively, “FHR” or “Defendants”) under seal. In support of this motion, INEOS states as follows:

1. INEOS brings this action against Defendants for indemnification and recovery for Defendants' breach of contract, breach of the duty of good faith and fair dealing, and fraud stemming from the Interest Purchase Agreement ("IPA") INEOS and Defendants entered into on September 18, 2018.

2. Under the IPA, INEOS agreed to acquire shares and certain business assets of Defendants' wholly-owned subsidiaries, including the ownership and operation of a chemical intermediates manufacturing facility located in Joliet, Illinois (the "Joliet Site").

3. The IPA contains confidential and sensitive business information related to Defendants' and INEOS's businesses, including operations at the Joliet Site. Therefore, under IPA Section 7.8(b), INEOS and Defendants agreed not to "disclose or otherwise make available to the public the terms of this [IPA] or publicly file or otherwise make available to the public copies of this [IPA] unless such Party determines, after consulting with counsel, that such disclosure, availability or filing is required by applicable Law."

4. The Complaint contains detailed allegations relating both to Defendants' and INEOS's businesses, including operations at the Joliet Site, as well the terms of the IPA. The Complaint also attaches the IPA and two IPA schedules as exhibits.

5. In order to satisfy its obligations under the IPA and keep the terms of the IPA confidential, INEOS requests leave to file the Complaint in this matter under seal.

6. In *In re Avandia Mktg., Sales Practices & Prod. Liab. Litig.*, 924 F.3d 662, 672 (3d Cir. 2019), the Third Circuit held that, though the common law afforded the public the right of access to judicial proceedings and records, that "right is not absolute." *See also Littlejohn v. Bic Corp.*, 851 F.2d 673 (3d Cir. 1988) (citing *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 598 (1978)). The "strong presumption of openness does not permit the routine closing of judicial records to the public." *Id.* "Courts may deny access to judicial records, for example, where they are sources of business information that might harm a litigant's competitive standing." *Littlejohn*, 851 F.2d at 678 (quoting *Nixon*, 435 U.S. at 598); *see also Leucadia, Inc. v. Applied Extrusion Tech., Inc.*, 998 F.2d 157, 162 (3d Cir. 1993) ("Documents containing trade secrets or other confidential business information may be protected from disclosure.").

7. Here, public access to the Complaint should be denied because the Complaint contains confidential and sensitive business information related to Defendants' and INEOS's businesses, including operations at the Joliet Site, and IPA Section 7.8(b) prohibits such disclosure.

8. INEOS will file a public version of the Complaint, with the confidential information redacted, within seven days of this motion being granted.

WHEREFORE, INEOS respectfully requests leave to file its Complaint in this matter under seal.

DATED: February 10, 2020

DLA PIPER LLP (US)

OF COUNSEL:

Amy M. Rubenstein
Emily D. Gilman
DLA PIPER LLP (US)
444 West Lake Street, Suite 900
Chicago, IL 60606
(312) 368-4000
amy.rubenstein@dlapiper.com
emily.gilman@dlapiper.com

/s/ John L. Reed
John L. Reed (I.D. No. 3023)
Peter H. Kyle (I.D. No. 5918)
Kelly L. Freund (I.D. No. 6280)
1201 North Market Street, Suite 2100
Wilmington, Delaware 19801
(302) 468-5700
(302) 394-2341 (Fax)
john.reed@dlapiper.com
peter.kyle@dlapiper.com
kelly.freund@dlapiper.com

Attorneys for Plaintiffs